

(S E R V E D)
(August 26, 2008)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

DOCKET NO. 08-04

TIENSHAN, INC.

v.

TIANJIN HUA FENG TRANSPORT AGENCY CO., LTD.

Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission ("Commission") by Tienshan, Inc. Complainant asserts that it is a corporation organized and existing pursuant to the laws of the State of Delaware with its principal place of business at 231 Wilson Avenue, South Norwalk, Connecticut 06854. Complainant alleges that Respondent, Tianjin Hua Feng Transport Agency Co., Ltd., is a foreign corporation organized and operating pursuant the laws of the People's Republic of China with its principal place of business at Rm. 1002, Bldg. A, International Commercial Trade Center, No. 59 Machang Road, Hexi District, Tianjin, China. Complainant also alleges that Respondent is operating as a bonded and tariffed foreign-based Non-Vessel-Operating Common Carrier under FMC No. 018117.

Complainant asserts that, in April 2008 it signed a sales contract for the purchase

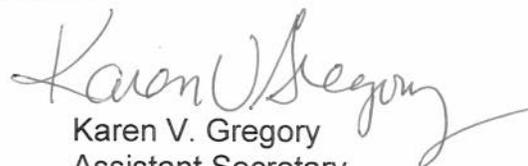
of stoneware from Henan Huatai Ceramic Technology Trading Co., Ltd. (“Henan Huatai” or “Shipper”), located in Henan, China, and that the terms of sale were FOB Tianjin Port, China. Complainant avers that it purchased the stoneware in order to perform its contracts with Wal-Mart Stores, Inc. (“Wal-Mart”) and other U.S. retailers. Complainant maintains that it paid the full contract price to Henan Huatai, and consequently, title to the goods was transferred to Complainant.

Complainant alleges that the goods were loaded on a Wan Hai Lines (Singapore) PTE Ltd. (“Wan Hai”) vessel, under a Wan Hai bill of lading naming Henan Huatai as Shipper, and Complainant as Consignee; and that the cargo arrived at the port of discharge, Long Beach, CA, mid-June 2008. Complainant further alleges that it paid the full amount of the ocean freight and other charges to Wan Hai. Complainant claims that Shipper, Henan Huatai, went out of business in June 2008, and Respondent, acting as a freight forwarder in China on behalf of the Shipper, is unlawfully holding the original bill of lading, alleging debts owed by Shipper to Respondent.

Complainant alleges that Respondent’s refusal to provide the original bill of lading to Complainant, unless Complainant paid to Respondent the amount owed by the Shipper, constitutes an unreasonable regulation or practice related to the delivery of property in violation of 46 U.S.C. §41102(c) (formerly §10(d)(1) of the Shipping Act of 1984). Complainant claims injury in the form of demurrage charges in the amount of \$16,944.00; loss of its funds held in an escrow account required by Wan Hai in the amount of \$47,801.42; and liquidated damages imposed by Wal-Mart for lost sales in the amount \$106,115.00; for a total of \$170,860.42, with liquidated damages continuing to accrue.

Complainant requests that the Commission issue as relief, an Order: (1) compelling Respondent to answer the charges in the subject complaint, and scheduling a hearing in Washington, D.C.; (2) finding that Respondent's activities were unlawful and in violation of the Shipping Act; (3) compelling Respondent to pay reparations of \$170,860.42 plus interest, costs, and attorney's fees; and (4) requiring Respondent to provide Complainant with the original bill of lading to allow Complainant to secure release of its escrow deposit from Wan Hai and stop other liquidated damages from accruing. Additionally, Complainant requests that the Commission issue further relief as it deems just and proper.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 C.F.R. 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 C.F.R. 502.61, the initial decision of the presiding officer in this proceeding shall be issued by August 26, 2009, and the final decision of the Commission shall be issued by December 24, 2009.


Karen V. Gregory
Assistant Secretary